

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 51

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte TOSHIO AIBE

Appeal No. 96-3841
Application No. 08/093,664¹

HEARD: February 5, 1998

Before CALVERT, ABRAMS, and NASE, Administrative Patent Judges.
NASE, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1, 2, 5 to 9, 13, 16, 17, 23, 25 and 26.² Claims 3, 4, 18 to 22, 24, 27 and 28 have been withdrawn from consideration under 37 CFR § 1.142(b) as being drawn to a nonelected invention. Claims 10 to 12, 14 and 15 have been canceled.

¹ Application for patent filed July 20, 1993. According to the appellant, the application is a continuation of Application No. 07/793,107, filed November 15, 1991, now abandoned.

² Claim 26 was amended subsequent to the final rejection.

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We REVERSE.

BACKGROUND

The appellant's invention relates to a deodorizing apparatus and toilet. An understanding of the invention can be derived from a reading of exemplary claims 1 and 23, which appear in the appendix to the appellant's brief.

The prior art references of record relied upon by the examiner as evidence of obviousness under 35 U.S.C. § 103 are:

Mizutani	52-63882 ³ (Japan)	May 26, 1977
Aibe et al. (Aibe)	2,088,719 (United Kingdom)	June 16, 1982
Sadao et al. (Sadao)	0,331,192 (European Patent Application)	Sept. 6, 1989
Masuda	1-268929 (Japan)	Oct. 26, 1989

Claims 1, 2, 5 to 9, 13, 16, 23, 25 and 26 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sadao in view of Mizutani and Aibe.

³ Our understanding of this foreign language document is based upon the translation dated April 1993 supplied by the PTO during prosecution of this application.

Claim 17 stands rejected under 35 U.S.C. § 103 as being unpatentable over Sadao in view of Mizutani, Aibe and Masuda.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the § 103 rejections, we make reference to the examiner's answer (Paper No. 36, mailed May 5, 1995) and the supplemental examiner's answer (Paper No. 42, mailed May 16, 1996) for the examiner's complete reasoning in support of the rejections, and to the appellant's brief (Paper No. 34, filed March 20, 1995), reply brief (Paper No. 37, filed July 5, 1995) and supplemental reply brief (Paper No. 43, filed July 16, 1996) for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

Before addressing the examiner's rejections based upon prior art, it is an essential prerequisite that the claimed subject matter be fully understood. Analysis of whether a claim is patentable over the prior art under 35 U.S.C. §§ 102 and 103 begins with a determination of the scope of the claim. The properly interpreted claim must then be compared with the prior art. Claim interpretation must begin with the language of the claim itself. Smithkline Diagnostics, Inc. v. Helena Labs. Corp., 859 F.2d 878, 882, 8 USPQ2d 1468, 1472 (Fed. Cir. 1988). Accordingly, we will initially direct our attention to each of the independent claims on appeal (i.e., claims 1, 23 and 26). These claims each recite that the deodorizing apparatus includes, inter alia, an active carbon honeycomb and a phosphoric acid-supporting active carbon honeycomb disposed in that order in a gas duct in the direction from the suction port to the exhaust port.

An issue presented by this recitation in each of the independent claims on appeal is can "the active carbon honeycomb" which precedes "the phosphoric acid-supporting active carbon honeycomb" be a chemical-supporting active carbon honeycomb? More specifically, would this recitation be interpreted as

reading on two phosphoric acid-supporting active carbon honeycombs in series between the suction port and the exhaust port of a deodorizing apparatus?

In proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification, and claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art. In re Sneed, 710 F.2d 1544, 1548, 218 USPQ 385, 388 (Fed. Cir. 1983). Our review of the appellant's specification (especially pages 5-7 and 29-33 and particularly page 33, lines 11-14) reveal that the appellant used "active carbon honeycomb" to distinguish it from "chemical-supporting active carbon honeycomb." In accordance with the above-identified principle, we interpret claims 1, 23 and 26 as setting forth that a nonchemical-supporting active carbon honeycomb and a phosphoric acid-supporting active carbon honeycomb are disposed in that order in a gas duct in the direction from the suction port to the exhaust port of the deodorizing apparatus.

With respect to the appealed claims, we agree with the examiner that it would have been prima facie obvious⁴ in view of the combined teachings of the applied prior art to modify Sadao's toilet deodorizing apparatus to arrive at the claimed invention.

Having arrived at the conclusion that the teachings of the applied prior art are sufficient to establish a prima facie case of obviousness, we recognize that the evidence of nonobviousness submitted by the appellant must be considered en route to a determination of obviousness/nonobviousness under 35 U.S.C.

§ 103. See Stratoflex Inc. v. Aeroquip Corp., 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983). Accordingly, we consider anew the issue of obviousness under 35 U.S.C. § 103, carefully evaluating therewith the objective evidence of nonobviousness supplied by the appellant. See In re Oetiker, 977 F.2d 1443, 1445-46, 24 USPQ2d 1443, 1444-45 (Fed. Cir. 1992); In re Piasecki, 745 F.2d 1468, 223 USPQ 785 (Fed. Cir. 1984).

⁴ In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that the reference teachings would appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed combination or other modification. See In re Lintner, 9 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

In this case the appellant has submitted evidence in the form of two declarations⁵ from the appellant to establish unexpected results.

It is well settled that unexpected results must be established by factual evidence. Mere argument or conclusory statements in the specification does not suffice. In re De Blauwe, 736 F.2d 699, 705, 222 USPQ 191, 196 (Fed. Cir. 1984). Furthermore, as stated in De Blauwe, 736 F.2d at 706 n. 8, 222 USPQ at 197 n. 8, "A proper showing of unexpected results will rebut a prima facie case of obviousness. In re Fenn, 639 F.2d 762, 208 USPQ 470 (CCPA 1981); In re Murch, 464 F.2d 1051, 175 USPQ 89 (CCPA 1972)."

The two declarations, taken together, set forth factual evidence as set forth in Table 1 of the declaration filed on September 19, 1994. The factual evidence establishes that Apparatus E⁶ provided a 100% elimination rate for H₂S, CH₃SH and

⁵ Declarations filed September 19, 1994 and July 5, 1995.

⁶ Apparatus E was a deodorizing apparatus wherein the active carbon honeycomb preceded the phosphoric acid-supporting active carbon honeycomb.

NH₃, while Apparatus F⁷ provided a 100% elimination rate for NH₃ but well less than a 100% elimination rate for H₂S and CH₃SH. The declarant concluded from the factual evidence that the present invention produces unexpected results.⁸

When the appellant demonstrates substantially improved results, as the appellant did here, and states that the results were unexpected, this suffices to establish unexpected results in the absence of evidence to the contrary. See In re Soni, 54 F.3d 746, 751, 34 USPQ2d 1684, 1688 (Fed. Cir. 1995). The examiner has not provided any persuasive basis to question the comparative data and assertion that the demonstrated results were unexpected. Thus, we are persuaded that the examiner's determination that the evidence contained in the two declarations was insufficient to rebut the examiner's prima facie case of obviousness was erroneous.

⁷ Apparatus F was a deodorizing apparatus wherein the phosphoric acid-supporting active carbon honeycomb preceded the active carbon honeycomb.

⁸ We note that Mizutani specifically teaches that the order of his acid-treated, alkali-treated, and untreated active carbon elements is arbitrary.

CONCLUSION

To summarize, the decision of the examiner to reject claims 1, 2, 5 to 9, 13, 16, 17, 23, 25 and 26 under 35 U.S.C. § 103 is reversed.

REVERSED

IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
NEAL E. ABRAMS)	APPEALS
Administrative Patent Judge)	AND
)	INTERFERENCES
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JEFFREY V. NASE)	
Administrative Patent Judge)	

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APPEAL NO. 96-3841 - JUDGE NASE
APPLICATION NO. 08/093,664

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APJ CALVERT

APJ ABRAMS

DECISION: **REVERSED**

Prepared By: Delores A. Lowe

DRAFT TYPED: 06 Feb 98

FINAL TYPED:

HEARD: 05 Feb 98

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